

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF OHIO
4 EASTERN DIVISION
5 - - - - -

6 SARAH ARONSON, M.D.,)
7 Plaintiff,)
8)
9 v. >) CASE NO. 1:10-CV-00372
10 >) JUDGE BOYKO
11 UNIVERSITY HOSPITALS OF)
12 CLEVELAND,)
13 Defendant. >)
14 - - - - -

15 DEPOSITION OF JERRY SHUCK, M.D.

16 Wednesday, December 22, 2010
17 - - - - -

18 The deposition of JERRY SHUCK, M.D., a Witness herein,
19 taken by the Plaintiff as if upon examination under the Ohio
20 Rules of Civil Procedure, before me, Mary C. Peck, a
21 Stenographic Reporter and Notary Public within and for the
22 State of Ohio, at the offices of Gordillo & Gordillo, LLC,
23 1370 Ontario Street, Suite 2000, Cleveland, Ohio, commencing
24 at 2:00 p.m., the day and date above set forth.
25 - - - - -

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18 - - - -

19 ALSO PRESENT

20 Sarah Aronson, M.D.

21

22

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1 JERRY SHUCK, M.D.

2 called by the Plaintiff for the purpose of examination,
3 as provided by the Ohio Rules of Civil Procedure, being by
4 me first duly sworn, as hereinafter certified, deposed and
5 said as follows:

6 - - - -

7 EXAMINATION OF

8 JERRY SHUCK, M.D.

9 - - - -

10 BY MR. GORDILLO:

11 Q Would you please state your full name for the record?

12 A Jerry, J-e-r-r-y, Mark, middle name, M-a-r-k, Shuck,
13 S-h-u-c-k.

14 Q And as we go along with our deposition, how would you
15 like me to address you?

16 A Any way you'd like; Jerry, Doctor Shuck, hey you,
17 whatever works.

18 Q Would you please state what your home address is?

19 A 2955 West Belvoir Oval, Shaker Heights 44122.

20 Q Does anyone else live there with you?

21 A My spouse at this time.

22 Q What is your spouse's name?

23 A Doctor Linda, L-i-n-d-a, Shuck.

24 Q Have any plans on moving any time soon?

25 A Not that I know of. We've been there 30 years, 31

1 . years. No, we're not planning on moving.

2 Q Are you currently employed?

3 A Yes.

4 Q Who is your employer?

5 A University Hospitals of Cleveland.

6 Q Have you had your deposition taken before?

7 A Yes.

8 Q Have you testified or given testimony as an expert
9 before?

10 A Yes.

11 Q Okay. Excluding your testimony as an expert, how
12 many times have you been deposed?

13 A As a surgeon, taking care of the patient, I'd say
14 about three or four times, and one time 27 years ago
15 there was a complaint that I testified on, 27, 28
16 years ago.

17 Q So in the three or four times that you have testified
18 other than as a capacity as an expert, were they all
19 in connection with medical negligence?

20 A Yes, yes.

21 Q Alleged medical negligence?

22 A Yes. I testified for the defense.

23 Q So other than cases involving claims of medical
24 negligence or your testifying as an expert, you've
25 not been deposed; is that right?

1 A That's correct.

2 Q Okay. I'll be brief since I think you've probably
3 been through the process before, but I'll let you
4 know a little bit about how I go about it.

5 If at any time you need a break, just say so and
6 I'll be happy to give you that break. I only ask
7 that if there's a question put to you at the time,
8 that you answer the question before you go.

9 A Sure.

10 Q The other thing I want to make sure about is when I'm
11 asking you questions, you have every right to make
12 sure I'm clear of the questions I'm asking you, so if
13 for any reason at all you don't understand my
14 question, will you let me know that?

15 A Sure, sure. I certainly will.

16 Q And by the same token, if you don't let me know that
17 you understood the question or didn't understand the
18 question, I'm going to assume that you did understand
19 the question; is that fair?

20 A That's fair.

21 Q Is University Hospitals of Cleveland your only
22 employer at the time now?

23 A Yes. I'm employed by the hospital and also by the
24 Department of Surgery, and there's a pass-through to
25 my salary from the hospital, so I'm paid by the

1 Department of Surgery, but most of my job is for the
2 hospital.

3 Q Okay. And do you have a job title for the hospital?

4 A Yes. I'm Director of Graduate Medical Education.

5 Q What are your duties as the Director of Graduate
6 Medical Education?

7 A That job entails trying to promote excellence in
8 training of residents and fellows, to make sure the
9 programs are accredited, to make sure that not only
10 the programs are treated properly but the residents
11 are treated properly, often an advocate for both, and
12 I'm a repository for what the rules and regulations
13 are to keep it accredited.

14 Q And when you say you're a repository, what do you
15 mean?

16 A Well, I'm often the go-to person to see what the
17 rules are from the accrediting body, the ACGME, which
18 is housed in Chicago. I'm their person, as well.

19 They have a title for me which is an odd title,
20 in my view, called the DIO, which is the designated
21 institutional official, so they hold me accountable
22 for everything and the hospital holds me accountable
23 for everything. I'm also Associate Dean for the
24 Medical School for Graduate Medical Education, and I
25 keep them apprized, as well. They do not pay me.

1 Q Can you -- is that a complete description of the
2 duties that you perform?

3 A In this position, yes. I'm also a surgeon.

4 Q Okay. As director of Graduate Medical Education, do
5 you have specific responsibilities concerning the
6 Anesthesiology Residency Program?

7 A All 65, including Anesthesiology.

8 Q Is there anything unique about your responsibilities
9 to the Anesthesiology Program?

10 A Unique? No. I don't see anything unique about it.

11 Q Is it fair to say there may be unique requirements
12 for that program?

13 A Yes. They have different requirements. Each program
14 has specific program requirements, and then there's
15 some common program requirements.

16 Q So you're, for example, the repository for all of
17 those requirements?

18 A Yes. They will call me and say, what are the rules?
19 And when they're accredited, I speak to every
20 accrediting person who looks at each program.

21 Q Could you describe for me what the relationship is
22 between you and the Department Chair, Doctor Nearman,
23 with respect to the residency, the Anesthesiology
24 Residency Program?

25 A I communicate with all chairmen, but my direct

1 communication for the program is usually with the
2 program director.

3 Q And from the period of October of 2006 through August
4 of 2009, the program directors for the Anesthesiology
5 Residency were Doctors Norcia and Wallace, right?

6 A Doctor Norcia is the program director. Doctor
7 Wallace is the associate program director. According
8 to the ACGME, there could only be one program
9 director, but there are many associate program
10 directors.

11 Q For the period that I just discussed --

12 A That's all -- they were in office at that time.

13 Q And Doctor Wallace was the only associate program
14 director for --

15 A In the Department of Anesthesiology, yes.

16 Q And so your communications are more frequently with
17 Doctor Norcia or Doctor Wallace, right?

18 A Yes. That's correct.

19 Q To whom do they report?

20 A About the program, they report to me and also to
21 their chairman. They have dual reporting
22 responsibility.

23 Q Do you know who Will Rebello is?

24 A Yes.

25 Q Tell me who he is.

1 A He's the manager of the Graduate Medical Education
2 Office. He works with me, for me.

3 Q And would you explain to me what the working
4 relationship is between you and Mr. Rebello relative
5 to the Anesthesiology Program?

6 A Well, it's no different from any other program. We
7 are essentially colleagues and partners. He has
8 certain responsibilities. I mean, we talk about
9 strategy together. If he has a problem, residents
10 often drop in his office for any reason, such as, the
11 call room last night wasn't cleaned on time. He gets
12 that kind of thing. Or if somebody just wants to
13 chat, residents feel comfortable with him. And yes,
14 he makes himself available.

15 Q But he reports to you?

16 A Yes.

17 Q To what extent are you responsible for the contracts
18 with the residents, if you have any responsibility?

19 A I sign them all.

20 - - - -

21 (Thereupon, Exhibit 6 was marked for the purpose of
22 identification.)

23 - - - -

24 Q (By Mr. Gordillo) You've been handed a document
25 marked as Exhibit Number 6. As we go through the

1 deposition, you're going to be handed a number of
2 documents, and I want to make sure each time you get
3 a document that you take all the time you'd like to
4 look it over and let me know when you've had an
5 adequate opportunity to review it.

6 A Yes. I think I understand this document.

7 Q Do you recognize the document?

8 A I recognize the document and my signature.

9 Q That's your signature at the bottom, right?

10 A Yes.

11 Q Actually on each of the two pages, right?

12 A Yes.

13 Q And this is the resident contract for Sarah Aronson
14 the period of March 1, 2009 through August 31, 2009,
15 correct?

16 A Yes.

17 - - - -

18 (Thereupon, Exhibit 7 was marked for the purpose of
19 identification.)

20 - - - -

21 Q (By Mr. Gordillo) And now you've been handed another
22 document marked as Exhibit 7. Again, take all the
23 time you'd like to look it over and let me know when
24 you've had an adequate opportunity to review it.

25 A That's fine.

1 Q Do you recognize the document?

2 A Yes.

3 Q Will you tell me what it is, please?

4 A Well, it's a contract for the year March 2007 through

5 February 2008. The contracts are renewed yearly.

6 Q And each page of this Exhibit 7 has been signed by

7 you, correct?

8 A Yes.

9 Q And do you recognize that it's also been signed by

10 Sarah Aronson, right?

11 A That's correct.

12 Q If you look at the third paragraph in the body of

13 Exhibit 6 below the effective period -- see the top

14 where it says Effective Period on Exhibit 6?

15 A All right. Here's Exhibit 6 and --

16 Q Effective Period?

17 A Yes.

18 Q I'm look at the third paragraph below that, starts:

19 UHCMC.

20 A Yes.

21 Q UHCMC agrees to provide an educational program that

22 at a minimum meets the standards established by the

23 ACGME and to provide benefits as outlined in the

24 Manual.

25 Did I read that correctly?

1 A Yes.

2 Q And in Exhibit 7, the same language appears, correct,
3 in the same place?

4 A Yes.

5 Q Exhibit 6 is for a period that begins March of 2009.
6 Exhibit 7 ends February 29th of 2008. Presumably
7 Doctor Aronson had a contract in the interim period;
8 is that a fair presumption?

9 A That's a fair presumption. I don't see it, but I
10 would think it was there.

11 Q To your knowledge, did the language we just read that
12 appears in both Exhibit 6 and Exhibit 7 also get used
13 in the typical contract?

14 A This is a typical contract. There is not a
15 difference in wording on these contracts.

16 Q And assuming that there was a contract in the interim
17 year, it likely has the same language, correct?

18 A That would be my assumption without seeing it, yes.

19 Q And as you read that language, do you understand that
20 UHCMC is agreeing to incorporate the ACGME Standards
21 as part of this contract? Is that right?

22 A Yes.

23 Q And likewise, in the first paragraph, it defines the
24 Manual as the Residents' and Fellows' Manual. That
25 is the Residents' and Fellows' Manual of UHCMC; is

1 that right?

2 A That's correct.

3 Q So the Fellows' Manual has been incorporated into
4 this contract as well, correct?

5 A Yes, sir.

6 Q And both the Manual and the ACGME requirements
7 address duty hours, correct?

8 A Yes.

9 Q And so the duty hour requirements are part of the
10 contract; is that right?

11 A Yes. If it's as outlined in the Manual, yes, the
12 duty hours are part of the contract that they would
13 agree to. And that's the identical wording from the
14 ACGME, by the way.

15 - - - -

16 (Thereupon, Exhibit 8 was marked for the purpose of
17 identification.)

18 - - - -

19 Q (By Mr. Gordillo) You've been handed a document
20 marked as Exhibit 8, and again, take all the time
21 you'd like to look it over and let me know when
22 you've had an adequate opportunity to review it.

23 A Okay.

24 Q Do you recognize the document?

25 A Yes.

1 Q Can you tell me what it is, please?

2 A It's part of the Manual for residents and fellows,
3 and it sets out the policies for Graduate Medical
4 Education for residents and fellows. It has --
5 obviously it starts on Page 28, so it's obviously
6 been selected.

7 Q And you see the section marked Duty Hours towards the
8 bottom of 28?

9 A Yes, sir.

10 Q I have the entire manual, and you're welcome to look
11 through that.

12 A I know the manual. I wrote it.

13 Q Is this the portion of the manual that deals with
14 duty hours?

15 A Yes, it is.

16 Q Is there any other portion of the manual, that you're
17 aware of, that deals with duty hours?

18 A No. There will be an addendum to this, but at this
19 time, this is still the duty hour requirements for
20 ACGME.

21 Q And this was the duty hour requirement that applied
22 during the period September, October, and November of
23 2008, right?

24 A That's correct.

25 Q With respect to the Anesthesiology Department and its

1 Residency Program, did you understand that Doctor
2 Wallace was the individual responsible for scheduling
3 the residents?

4 A Yes.

5 Q And in the context of making sure that scheduling was
6 within the duty hours requirements, would it have
7 been his responsibility to do that?

8 A Yes. He does that for the program director, but
9 that's been one of his major responsibilities, yes.

10 Q And would you agree with me that the program should
11 be scheduling work hours in accordance with the duty
12 hour requirements?

13 A Yes.

14 Q All right. And in the Anesthesiology Program for the
15 period September through November of 2008, compliance
16 with the duty hour requirement was a matter of
17 self-reporting; is that right?

18 A There's various ways it's done; self-reporting and
19 residents will confirm that, yes, I held to this
20 schedule. And they report -- the program director
21 reports that every month, if there's variations or
22 problems, because those are looked at very carefully
23 when the programs are reviewed by the accrediting
24 body. So we watch that very carefully in our office,
25 as well. We don't see the schedules, but we make

1 . sure that that report is given to us.

2 Q So there's a self-reporting form that the residents
3 fill out, correct?

4 A It varies. Many of them have a self-reporting form
5 and then they sign an attestation that it's correct.

6 Q And I'm talking about the Anesthesiology Program
7 right here now.

8 A Yes.

9 Q And then the schedules would reflect the hours
10 worked, right?

11 A Should.

12 Q Or the hours assigned?

13 A That's a fair assumption, yes.

14 Q Are there any other records that are kept to show
15 what hours were worked by the residents?

16 A I have no knowledge of it in my office.

17 Q The reports that you were talking about, is that a
18 third kind of documentation, the hours worked?

19 A These are reported to Will Rebello quite often.
20 That's who gets them and gives a report at the
21 meeting of the Graduate Medical Education Committee,
22 and we discuss duty hours every month, and if there
23 are variances, they are reported to the entire group.

24 Q I think I understood your testimony earlier was one
25 of your responsibilities was to make sure that the

1 programs were in compliance with ACGME requirements.

2 A That's correct.

3 Q Do you likewise have responsibilities for making sure
4 that the program was in compliance with the manual?

5 A Yes. The manual was written based upon the
6 requirements of the ACGME in many areas.

7 Q Within the Anesthesiology Residency Program, who
8 would be considered supervisors of the residents?

9 A The program director.

10 Q Did you have any policies regarding training program
11 directors on how to recognize fatigue symptoms?

12 A Yes.

13 Q And where are those policies set forth?

14 A We have policies from the ACGME. We require all
15 departments to have education in the area of fatigue,
16 sleep deprivation, et cetera.

17 Q Do you know whether Doctor Norcia received that
18 training on recognizing fatigue?

19 A He has to schedule that, and yes.

20 Q Do you know whether he did schedule it?

21 A I do know that the residents have gotten that
22 training, and so it had to be scheduled through
23 either Wallace or Norcia.

24 Q But I'm not asking about the residents now. I'm
25 asking specifically whether the supervisors were

1 trained.

2 A Usually I know in other departments -- I can't answer
3 specifically how many come to the session on fatigue,
4 but if it's run by Norcia and Wallace, I'm sure
5 they're there. I shouldn't say I'm sure they're
6 there, but I assume they're there.

7 Q But you do not know for sure?

8 A I do not know for sure.

— — — —

10 (Thereupon, Exhibit 9 was marked for the purpose of
11 identification.)

12 — — — —

13 Q (By Mr. Gordillo) You have been handed a document
14 marked as Exhibit 9. Please take all the time you'd
15 like to look it over and let me know when you've had
16 an adequate opportunity to review it.

17 A I've looked at the first four pages which relates to
18 Anesthesiology. All the other ones are in here for
19 other programs.

20 Q Do you recognize the document?

21 A Yes. It's a summary document that helps program
22 directors and people in my position to see what
23 changes are there and how each program has specific
24 requirements on duty hours, but the basic ones are
25 very similar.

1 Q And you recognize that this is a document that was
2 prepared by the ACGME?

3 A Yes. This was a document prepared by the ACGME.

4 - - - -

5 (Thereupon, Exhibit 10 was marked for the purpose of
6 identification.)

7 - - - -

8 Q (By Mr. Gordillo) Now you've been handed a document
9 marked as Exhibit 10.

10 A Yes.

11 Q And again, please take all the time you'd like to
12 look it over and let me know when you've had an
13 adequate opportunity to review it.

14 A Yes, sir.

15 Q Do you recognize this document?

16 A Yes, I do.

17 Q Can you tell me what it is, please?

18 A It's further explanation of the common requirements,
19 which means the requirements for all programs, and it
20 should be uniform across all 65 programs. This
21 states what the common requirements are.

22 Q And with respect to the provisions in Letter D, Duty
23 Hours --

24 A Yes.

25 Q -- was it your understanding that these requirements

1 with respect to duty hours applied to the UH
2 Anesthesiology Residency Program?

3 A All residency programs.

4 Q And likewise, Section E with respect to On-Call
5 Activities applied?

6 A Yes.

7 Q And Section G with respect to Duty Hours Exceptions.

8 A Yes.

9 Q And these terms are incorporated in the contract that
10 you signed, correct?

11 A These are implied in the contract that they've read,
12 these documents, and let me see --

13 Q Well, for example in Exhibit 6 --

14 A I'm looking at this, as well.

15 Q -- where the documents recited that the program at a
16 minimum meets the standards established by the ACGME,
17 right?

18 A Yes.

19 Q And the duty hours addressed in Exhibit 10 are
20 minimum standards established by ACGME, correct?

21 A That's correct.

22 - - - -

23 (Thereupon, Exhibit 11 was marked for the purpose of
24 identification.)

25 - - - -

1 Q You've now been handed a document marked as Exhibit
2 11. Again, please take all the time you'd like to
3 look it over and let me know when you've had an
4 adequate opportunity to review it.

5 A Okay. I've looked at the Frequently-Asked Questions.
6 I have not gone over these before. They always put
7 out a new series of frequently-asked questions, but
8 I'm familiar with the questions that are very
9 commonly asked.

10 Q Okay. As you looked through this document, the
11 questions that are identified on the first three
12 pages --

13 A Okay.

14 Q -- and the answers that are given, do you see
15 anything inaccurate about the answers to the
16 questions?

17 A On brief review, I don't see any differences. These
18 are often the same answers I use when program
19 directors ask me, yes, sir.

20 Q On Page 4, the question is asked: Can residents take
21 in-house call every other night for some part of the
22 month, if they get extra time off later in the
23 months?

24 Do you see that question?

25 A Yes.

1 Q And do you find that answer to be an accurate answer?
2 A We prefer that they not take call every other night,
3 and the answer is correct. We advise strongly
4 against it. The requirement is no more often than
5 every third night.

6 Q Look at the bottom of Page 7, top of Page 8, and you
7 see the bottom of Page 7 is the question about: Can
8 we relax the duty hour standards.

9 A That is a frequently-asked question during the
10 holidays.

11 Q Do you find that the answer given is an accurate
12 answer given to the question?

13 A Yes. We don't vary the basic rules of the ACGME.

14 Q That was going to be my next question.

15 These questions and answers would be equally
16 applicable when applied to the UH Standards for Duty
17 Hours, right?

18 A Yes, sir.

19 Q And do you know, were these the standards for duty
20 hours that would have applied for the period of
21 September, October, November of 2008?

22 A Yes. These should have applied then, yes.

23 Q You described one of your duties as being an advocate
24 for both the residents and the program. I think you
25 said treating residents and the program; is that

1 fair?

2 A That's what I try to do, yes, sir.

3 Q What do you mean by being an advocate for the
4 residents?

5 A To make sure that they get what they need. Residents
6 will say, we need a better lounge, and I will take
7 that request to the institution and say, you know, we
8 need to provide better in-house services to
9 residents, and when we do that, we're able to get the
10 resources and build a kitchen, and all that stuff,
11 for them.

12 So I'm an advocate for their needs and for
13 individuals, as well. They often stop in the office
14 and ask me things and I try to help them. And for
15 program directors, they will say, can you help us
16 recruit a new faculty because our program is wanting
17 in this area, so I advocate for all of them as best I
18 can and listen and hear the stories.

19 Q But sometimes the needs or wants of the residents may
20 become inconsistent with what's best for the program;
21 is that fair?

22 A I think that's possible, yes.

23 Q So you also serve as an advocate for the program?

24 A Yes. I have to be fair.

25 Q How do you balance one against the other?

1 A I don't have a formula for how I balance that. I
2 listen to the facts, hear people, do not get into
3 anything confrontational at all, and try to make sure
4 that they feel that if they're having a concern that
5 they're heard fairly and that it is taken nowhere
6 else unless they ask me to take it somewhere else.

7 Q Has there ever been a time when you have said, I
8 can't advocate for the program at this time?

9 A I can't advocate for the -- I guess I need some
10 explanation of that. Do you mean that I would take
11 sides against the program or --

12 Q Well, I'm just using the word as you've used it, so
13 whatever it means to you to say I advocate for the
14 program, I'm asking you has there ever been a time
15 when you've been presented with a situation that
16 caused you to say, I can't do it. I cannot advocate
17 for the program?

18 A There are times when I tell the program, you have to
19 stop doing this, you need to do that if it seems in
20 the best interest of the residents in fairness in
21 accordance with the rules, and the same thing with
22 residents.

23 Q So if a resident comes to you with a concern --

24 A Yes.

25 Q -- and you believe that it's inappropriate, you would

1 say, I can't advocate for you?

2 A I cannot see myself saying it's inappropriate. I see
3 myself hearing them with a door closed as a mentor
4 and as an educator and as a supporter. I hope that
5 people are comfortable talking to me. They come all
6 the time for a variety of reasons.

7 Q What are the guidelines you would rely upon to decide
8 you would not advocate for a resident?

9 A I would have to get all the facts. The guidelines?
10 I don't have guidelines. I think if a resident has
11 violated policy or violated the rules, I would tell
12 them straight away.

13 Q The Residency Program was required to provide
14 evaluations of clinical competency for each resident
15 that participated in any portion of a six-month
16 period before January in the year; is that right?

17 A What was the question?

18 Q Fair enough. That was a long pause.

19 MR. GORDILLO: Would you read that
20 back?

21 - - - -

22 (Thereupon, question read by Notary.)

23 - - - -

24 Q Isn't it correct that in January of each year, the
25 Anesthesiology Residency Program had to submit an

1 evaluation of clinical competency for each resident
2 that participated in the program for any portion of
3 the prior six months?

4 A That's done differently by various departments. I
5 expect and the ACGME expects that the six
6 competencies that they hold as part of their
7 requirements are being met throughout the year, and
8 those should be evaluated certainly every six months,
9 and some do it every month. It's done variably.

10 Q But in Anesthesiology, it's done every six months,
11 right?

12 A Yes.

13 Q And in particular, it's done July and January?

14 A I don't know that for sure, but that's how it appears
15 to be.

16 Q In your capacity as the repository of ACGME
17 requirements, is that something that you should be
18 the person who knows the answer to that question?

19 A No.

20 Q And I'm not -- that really is asking, not accusing.

21 A I got 65 programs, and each one does it variably, and
22 I don't tell them how to do it. I just want to make
23 sure it's done.

24 Q Who is it that should be the one who really
25 understands and knows how to comply with the

1 requirement?

2 A The program director should be knowledgeable about
3 the requirements.

4 Q Do your responsibilities cause you to become involved
5 in staffing decisions?

6 A No. The ACGME states that the program director is in
7 charge of staffing both at our hospital, and if
8 someone goes to another hospital, he has to know
9 who's over there and how that's staffed. We can't
10 send somebody to another hospital and not know who's
11 supervising.

12 Q Do your responsibilities result in your participating
13 in the decision-making process about what roles
14 individuals will fill within a particular program?

15 A No. If I have a program director I'm working with
16 whom I believe to be doing the job that's expected, I
17 don't get any deeper than that. Each one manages his
18 team of educators differently.

19 Q And if you believe that the program director is not
20 doing the job they should be doing, do you take any
21 action?

22 A Yes.

23 Q What actions would you take in such a case?

24 A Calling them in and advising them all the way to --
25 which has recently happened -- telling them that they

1 cannot continue to be program director. The ACGME
2 gives me the authority to do that, but I usually do
3 that in association with the department chairman. I
4 can do that on my own if I feel it's required.

5 - - - -
6 (Thereupon, Exhibit 12 was marked f
7 identification.)

9 Q (By Mr. Gordillo) You've been handed a document
10 marked as Exhibit 12. Please take all the time you'd
11 like to look it over and let me know when you've had
12 an adequate opportunity to review it.

13 A Yes.

14 Q Do you recognize --

15 A I do recognize it.

16 Q Okay. Describe for me what this document represents.

17 A It's an email from Doctor Aronson to me confirming
18 conversations we had on -- according to this -- the
19 16th of June 2009, and it deals in several items.

20 One is the appeal processes that are available.
21 Another is making sure that the working conditions
22 are appropriate and non-hostile, which I have
23 followed through with. You indicated that Doctor
24 Wallace was no longer a player, which is correct.
25 told him so, and am I'm summarizing this correctly?

1 And I thought it would be most appropriate for Doctor
2 Aronson to meet with me to talk about these things.

3 I think emails do not reflect often what's trying
4 to be communicated; body language, types of
5 inflection, and I wanted to make sure everything was
6 clear.

7 Q At the risk of beating a dead horse, it looks to me
8 like the on the 15th of June, Sarah Aronson asked you
9 to have a meeting. On the 16th of June, you had the
10 meeting. On the 20th of June, she wrote you an email
11 summarizing what happened at the meeting, and you
12 then acknowledge that she had accurately summarized
13 the meeting. Is that a fair characterization of this
14 document?

15 A I think it's a fair characterization of the document,
16 to my recollection.

17 Q Were you involved in the decision-making process that
18 led to Doctor Wallace no longer being a player?

19 A Yes.

20 Q Tell me what happened in that process.

21 A I told Doctor Wallace directly that he was too
22 involved and that it was so uncomfortable for Doctor
23 Aronson, that it would be better if he weren't part
24 of this process since there may be fear of
25 intimidation, whatever the reason was, and I don't

1 like a resident to be in an environment where one
2 faculty member is perceived as being either
3 frightening or inappropriate or mean, or whatever. I
4 just don't think that's right. So I asked him to
5 step aside and stay out of these conversations.

6 Q And how did he respond to that?

7 A He agreed.

8 Q He agreed with your reasoning or he agreed just to
9 step aside?

10 A Both.

11 Q What did you do to come to your conclusions about
12 him?

13 A I was observing Doctor Aronson's extreme discomfort,
14 which I was actually pleased that she was willing to
15 tell me. I also discussed it with the program
16 director and the chairman of the department to keep
17 David Wallace out of this because it's too
18 uncomfortable, may be destructive, and I didn't want
19 anything to get in the way of fairness or perceived
20 fairness.

21 Q Did you see any similar problems with respect to
22 destructiveness in the case of Doctor Norcia's
23 dealing with Sarah Aronson?

24 MR BIXENSTINE: Objection. Go

25 ahead.

1 A I didn't go in that direction because I felt that
2 Doctor Norcia understood the problems of being
3 uncomfortable, and he's the program director, and I
4 worked with him and Doctor Nearman.

5 Q And as you were making inquiry, did you see anything
6 about Doctor Nearman's interaction with Sarah Aronson
7 that would give you reason to believe he was making
8 her uncomfortable?

9 MR BIXENSTINE: Objection.

10 A I don't recall anything like that.

11 Q What information were you getting that was different
12 about Doctor Wallace that made you believe --

13 A First, my meetings with Doctor Wallace, who was very
14 outspoken, and also the agreement from both Norcia
15 and Nearman that Doctor Wallace was way too
16 emotionally involved, and I think that's a fair
17 statement.

18 My job was to provide an environment to get this
19 sorted out where people weren't threatened.

20 Q When you were doing your investigation, did you get
21 any sense of what caused Doctor Wallace to be so
22 emotionally involved?

23 A No, sir.

24 Q Did you hold any opinion of your own about what
25 caused him to be so emotionally involved?

1 A Not really. Some of the -- I will volunteer some of
2 it is his temperament. He's very by-the-book and can
3 be a little rigid.

4 Q What did you mean when you indicated in substance to
5 Doctor Aronson that you would be involved in this
6 on-going process?

7 A I meant that I would hope that she would feel
8 comfortable letting me know what's going on, and I
9 felt that I had to step in and be a party, which I'm
10 not always, but once things rise to this level, I
11 become a party to it. The small things day-to-day,
12 no.

13 Q With respect to her reference about no plan to offer
14 her an appeal process, what did you understand at
15 that time that she wanted to appeal?

16 A I wasn't sure, except that I did know that options
17 were provided and remediation or extension of program
18 is not appealable.

19 Q When you say options were provided, what options are
20 you talking about?

21 A Well, everything from termination to probation to all
22 sorts of things which would have to be reported, and
23 that was an option provided to extend six months.

24 Q Option provided to whom?

25 A To Doctor Aronson to complete -- successfully

1 complete the program and to demonstrate improvement
2 in whatever deficiencies they found.

3 Q I'm sorry. Repeat for me what the options were.

4 A I guess one option is termination. Another option
5 is, since she's in her last year, it's not
6 non-renewal. Another option is probation. Another
7 option is remediation.

8 Q And is it your testimony when you say these options
9 were provided that she was given the choice among
10 those options?

11 A That's my understanding.

12 Q Who gave her those options?

13 A These were provided by, I believe, Doctor Norcia, and
14 I think that she had met with whoever provided the
15 options with counsel and made that decision.

16 Q So the choice she was faced with was a disciplinary
17 action, ie termination or probation?

18 A Adverse action, yes, sir.

19 Q Or remediation?

20 A Yes.

21 Q Did you see that as a real choice?

22 A I thought that -- yes. I thought it was a choice in
23 that the opportunity -- if she said, then go ahead
24 and fire me, then she could appeal that and really
25 make her case. That is an option. I've seen that.

The other is if you give some remediation, then that does not have to be reported to the Ohio State Board of Medical Examiners. That does not follow her as a paper trail forever, and so that option actually provided her -- and I didn't see that it's a big choice, either, in that provided her an opportunity to finish the program and demonstrate that she's doing the job.

9 Q When a resident is placed in remediation under the
10 manual, isn't the resident supposed to be given a
11 written remediation program?

12 A Usually we do recommend that. I don't know if one
13 was given here or not.

14 MR BIXENSTINE: I'm sorry. I didn't
15 hear the end of his answer.

17 (Thereupon, record read by Notary.)

19 Q (By Mr. Gordillo) Did you have any understanding of
20 what Doctor Aronson's remediation program was?

21 A To continue -- my understanding is to continue
22 certain rotations that were difficult for her where
23 she could show improvement, and that was certainly
24 what most remediations do, which means that it's not
25 a probation, it's a remediation, and we'll fulfill

1 this and you finish the program and there we are.

2 Q Did you understand that as part of her program her
3 training was being extended for six months?

4 A Yes.

5 Q Did you understand that she had received notice of
6 that decision in January of 2009?

7 A I don't know when she was notified of that.

8 - - - -

9 (Thereupon, Exhibit 13 was marked for the purpose of
10 identification.)

11 - - - -

12 Q (By Mr. Gordillo) Now you've been handed a document
13 marked as Exhibit 13. Would you please take all the
14 time you'd like to look it over and let me know when
15 you've had an adequate opportunity to review it?

16 A I've read it.

17 Q Have you seen that document before?

18 A No.

19 Q After reading that document, does it refresh your
20 recollection in any way about when Sarah received
21 notice that she was going to be put into remediation?

22 A No. I heard about the medication issue, but no, I
23 wasn't -- I'm not sure of the timing.

24 - - - -

25 (Thereupon, Exhibit 14 was marked for the purpose of

1 . identification.)

2 - - - -

3 Q (By Mr. Gordillo) You've now been handed a document
4 marked as Exhibit 14. Please take all the time you'd
5 like to look it over and let me know when you've had
6 an adequate opportunity to review it.

7 A I've looked at it.

8 Q Do you recognize it?

9 A I recognize it. It's from the Residents' and
10 Fellows' Manual.

11 Q And I want to turn your attention to the document
12 marked Page 10, Performance Review Actions.

13 A Yes.

14 Q And the paragraph is B-2, Remediation.

15 A Yes, sir.

16 Q Is that the policy that was in effect from December
17 of 2008 through August of 2009?

18 A Yes, sir.

19 Q And so when we're talking about the remediation
20 option for Sarah Aronson, it would be an option
21 pursuant to the standard set forth in Exhibit 14,
22 correct?

23 A Yes.

24 Q The first paragraph dealing with remediation, and the
25 last sentence of that first paragraph says: It is

1 not to be used in lieu of a disciplinary action.

2 Did I read that correctly?

3 A Yes, you did.

4 Q How is it consistent to offer an option of
5 disciplinary actions while the policy is not to offer
6 remediation in lieu of a disciplinary action?

7 A I was not at the meeting where this was presented.
8 Remedial -- when one is presented -- one presents
9 what options are, we don't say, we'll use this and
10 not use that. Sometimes the resident is given the
11 opportunity to choose, and this wasn't then if she
12 hadn't done that -- if she had not accepted the
13 remediation, we would have had to have further
14 discussions about it. But that was one of the
15 options presented to her. I was not at that meeting.
16 I don't know who exactly was at that meeting.

17 But in general, the disciplinary action is a very
18 severe thing and we try, if we can, to prevent that,
19 to try to prevent that, and that seemed to be a way,
20 if we could, to allow her to finish the program and
21 not be labeled by having to report to the Ohio State
22 Board.

23 Q Well, when she was presented with options -- we
24 talked about three, correct?

25 A Mm-hmm.

1 Q You need to answer yes or no.

2 A Yes, sir.

3 Q Was none of the above an option?

4 A An option is to say, I'm going to have to think about
5 all this because this may not be appropriate. Yes.
6 None of the above is an option.

7 Q Was it presented to her as an option?

8 A I have no idea if that was presented.

9 Q You're not aware of any information that suggests
10 that Sarah Aronson was told, well, you can have
11 remediation, probation, termination, or you don't
12 have to have any of these things?

13 A I don't know that conversation.

14 Q To your knowledge, was that discussed with you and
15 any other member of the Anesthesiology Residency
16 Program?

17 MR BIXENSTINE: Objection. I don't
18 know what that means.

19 MR. GORDILLO: All right. Fair
20 enough.

21 Q (By Mr. Gordillo) Did you discuss with Doctor Norcia
22 the possibility that there would be neither
23 remediation nor any disciplinary action taken against
24 Sarah Aronson?

25 A We did not have that conversation.

1 Q Did you have such a discussion with Doctor Wallace?

2 A No. I was not discussing this with him.

3 Q Did you have such a discussion with Doctor Nearman?

4 A No.

5 Q Would there have been any other individual within the
6 Anesthesiology Residency Program with whom such
7 discussion would be appropriate?

8 A Not for me.

9 Q If you look at the Paragraph 2-b --

10 A Yes.

11 Q -- the second sentence reads: The Resident's
12 deficiencies will be identified, a remedial program
13 plan will be established, and a frame for completion
14 of the remedial program will be discussed, documented
15 and signed by the Resident.

16 Did I read that correctly?

17 A Yes, you did.

18 Q Have you ever seen such a document that was signed by
19 Sarah Aronson?

20 A I don't recall that one.

21 Q And the next sentence says: A copy of the
22 remediation plan will be given to the Resident, and a
23 copy will be placed in the Resident's file.

24 Did I read that correctly?

25 A You read that correctly.

1 Q And have you ever seen such a copy of a remediation
2 plan in her file?

3 A No. I don't keep her file.

4 Q Would you agree with me that that Paragraph b
5 requires a written remediation plan to be provided to
6 the resident?

7 A It appears that that's exactly what it says.

8 Q And is it fair to say that UH was taking the position
9 that because she was in remediation, she had no right
10 to appeal?

11 A That's true. She did not have a right to appeal a
12 remediation. We checked that even with the ACGME.

13 Q What's it called when you extend training without a
14 written program for extending her training?

15 A I don't know a name for such a process.

16 Q Is there any -- would that ever be appropriate?

17 A I would prefer to have things documented well.

18 Q Would it ever be appropriate?

19 A I would have to say no, it wouldn't be appropriate.

20 Q And it would be contrary to the terms of the
21 resident's contract, correct?

22 A If the rules that we've written in the manual, which
23 the resident reads, signs that they've read it, that
24 means that this is part of the contract.

25 Q When did you first become aware that Doctors Norcia

1 or Wallace had concerns about Sarah Aronson's
2 performance?

3 A I don't know exactly when. I do know that Doctor
4 Aronson wanted to meet with me, and I heard about
5 some of this material from her as we spoke. I'm not
6 sure exactly what other information I got from whom
7 or when, but I do know that in this process, sometime
8 either December or January, Doctor Aronson met with
9 me somewhere in that period. She met with me several
10 times.

11 Q At some point, did you learn that she had been
12 removed from her duties to undergo a fitness-for-duty
13 examination?

14 A Yes.

15 Q When did you learn about that?

16 A I learned about that essentially when it happened.

17 Q Were you consulted before it happened?

18 A At that point, this was a decision made by the
19 program and the HR Department, and perhaps the Legal
20 Department. The policy has since changed.

21 Q And the policy that you reference, that's the policy
22 with respect to referral to EAP, correct?

23 A Yes.

24 Q Do you consider that policy to be among the policies
25 you're responsible for knowing?

1 A Now. We've met with our team, and it's decided that
2 now I'm the funnel into which requests to EAP must go
3 through.

4 Q When did that occur?

5 A A couple months ago.

6 Q Were you familiar generally with the policies for
7 referral at the time that Sarah Aronson was --

8 A Generally, yes.

9 Q Did you understand that they were both policies for
10 mandatory referral to EAP at different tiers?

11 A Yes.

12 Q Were you consulted about what tier the referral to
13 EAP should occur to for --

14 A Not at that time.

15 Q Did you know what tier was relied upon for the
16 referral?

17 A No. All I know is what I learned later.

18 Q And when you say you learned later -- and I don't
19 want to know about discussions with counsel.

20 A No.

21 Q Did you learn later from some other source, other
22 than counsel?

23 A Yes. From some of these documents and from, I think,
24 the program director. I learned about it after the
25 fact.

1 Q Were you ever asked for your opinion about whether it
2 was an appropriate referral?

3 A No. This happened before. We didn't discuss whether
4 I thought it was appropriate after the fact, and I
5 didn't know about it at the time.

6 Q But you had discussions about it after the fact?

7 A I knew about it after the fact.

8 Q With whom did you discuss this?

9 A Actually, I didn't know about it until fairly
10 recently.

11 Q Did you know about it before the litigation?

12 A No.

13 MR. GORDILLO: Let's take a quick
14 break. Is that all right?
15 - - - -

16 (Thereupon, a recess was had.)
17 - - - -

18 MR. GORDILLO: Back on the record.
19 Would you read the last question
20 and answer?
21 - - - -

22 (Thereupon, record read by Notary.)
23 - - - -

24 (Thereupon, Exhibit 15 was marked for the purpose of
25 identification.)

1 . - - -
2 Q (By Mr. Gordillo) Now you've been handed a document
3 marked as Exhibit 15. Please take all the time you'd
4 like to look it over and let me know when you've had
5 an adequate opportunity to review it.

6 A I've read it.

7 Q Do you recognize the document?

8 A Yes.

9 Q Tell me what it is, please.

10 A Well, it's a response -- at the bottom, Doctor
11 Aronson acknowledged talking to me the day before,
12 and she's going to be meeting with Doctor Nearman,
13 and she wanted to know if I had anything that would
14 be useful and wanted to know if I had spoken to him,
15 and she thanked me for the time.

16 My response was that I was glad she was seeing
17 Doctor Nearman. I hadn't spoken to him. I think at
18 this time I can't be seen as your advocate. I can't
19 be in her corner against the others. But your agenda
20 is to get clarity as to the chances of success from
21 his perspective of this extra time. He needs to know
22 that you're going to agree with this plan. Ask for
23 suggestions for improving your performance. He will
24 have been advised, and I really wanted her to have
25 some face time with Doctor Nearman because I wanted

him engaged, to be in contact with his own faculty in hoping that he could be, as I mentioned, a mentor, sympathizer, and/or advocate.

Q What did you understand would be the purpose for the meeting scheduled between Sarah Aronson and Doctor Nearman?

A The reason I thought it was a good idea? Is that your question?

Q What did you understand -- what purpose for the meeting?

A Why did I ask them to meet?

Q Yes.

A As stated, I think that it was a good opportunity for her to talk to people who were not so actively engaged with her, to somebody who's got a more distant view, perhaps, who could see fairness, and to get his advice on what she might do to help her performance, and I really think it's valuable to have people having a decent relationship with people who are the leaders of their department who are not involved in what became a somewhat confrontational activity.

Q So did you understand they were going to meet to discuss her performance?

A My view is they were going to meet for her to talk to

him, to see if he understood what her issues were, and how he might advise her to make sure she's successful.

Q And what did you understand her issues to be at the time of this email exchange?

A As far as I knew, a decision was made based upon the perception that her performance in some areas was lacking and that what can she do to do that better, and that was my understanding. I don't know all the specifics.

Anesthesiology is very demanding about 10 percent of the time. It has a lot of crises, potential crises, and most of it is kind of like a piolet between take-offs and landings.

Q What was it about the situation, as you understood it, that prevented you from being seen as her advocate?

A Several things. Number one, that would mean I'm taking sides against her department rather than trying to be a moderator. The second, if there was some sort of appeal -- I wasn't even sure of what decisions were made. I thought I knew. But I have to be the chairman of that committee. I'd have to recuse myself if I become too close to the resident, which I have to be careful about.

1 Q Which committee is it that you chair?

2 A I would chair any appeal committee, and I would also
3 be asked by a variety of people what my opinions
4 were, and I couldn't be in this to say that one
5 person is good, the other people are bad. I have to
6 support both so they can both achieve their
7 objectives. I didn't think it was right to choose
8 sides if it became confrontational. Although I made
9 my position clear with both Nearman and Wallace.

10 Q What did you say to both Nearman and Wallace when you
11 made your position clear?

12 A That we have to make sure that Doctor Aronson knows
13 what's going on here, that we have to make sure that
14 things are fair, and I would hope documenting
15 performance appropriately and giving her feedback.
16 That's universal with training of residents.

17 Q Did you have the impression at the time that she was
18 not being given adequate notice, feedback, and
19 documentation?

20 A I wasn't aware of that.

21 Q She hadn't made any mention of such concerns?

22 A Which concerns?

23 Q Sarah had not made any mention of concerns to you
24 about the lack of notice that she was given with
25 respect --

1 A The documentation?

2 Q Yes.

3 A That may have come up in the conversation, but I
4 don't recall the details of it.

5 Q Did she describe to you any concerns about a lack of
6 sufficient feedback?

7 A I don't have anything specific about that, but
8 that's -- if that's not brought up by the resident, I
9 bring it up.

10 Q Why did you think it would be great if Doctor Nearman
11 could become Sarah's mentor, sympathizer, and/or
12 advocate?

13 A Because I didn't think he was emotionally engaged,
14 was having -- he's not the program director, but he's
15 the oversight person. He should be the peacemaker in
16 his department, and his personality is much more laid
17 back. That was my perception. That's been my
18 perception.

19 Q Did you understand that the concerns that Doctor
20 Aronson was raising with you in January of '09 were
21 part of a continuum of concerns that she raised with
22 you in June of '09?

23 A Not sure I know how to answer that. Quite often the
24 same subjects come up. We actually had very long
25 conversations. I knew how upset she was.

1 Q Well, look again, please, at Exhibit 12. And we
2 talked about this exhibit referencing a meeting that
3 you had with Doctor Aronson on June 16th.

4 A Okay.

5 Q And now my question is: Did you understand that the
6 problems she was talking to you about on June 16th
7 were part and parcel the same problems that she was
8 talking to you about in January of 2009 as referenced
9 in Exhibit 15?

10 A My recollection of that is much of the same pieces of
11 the conversation engaged in earlier as well as later.
12 I mean, a lot of the same issues came up.

13 - - - -

14 (Thereupon, Exhibit 16 was marked for the purpose of
15 identification.)

16 - - - -

17 Q (By Mr. Gordillo) Now you've been handed a document
18 marked as Exhibit 16. Please take all the time you'd
19 like to look it over and let me know when you've had
20 an adequate opportunity to review it.

21 A I read it.

22 Q Do you recognize the document?

23 A Yes.

24 Q It's a letter from Doctor Aronson to you in March of
25 2009, right?

1 A Yes.

2 Q And do you recognize that again she's talking about
3 the same problems that she raised with you in January
4 of 2009 and in June of 2009? Isn't that true?

5 A Yes.

6 Q And do you recall what your response was to this
7 letter?

8 A No, I don't at this point, if I responded in writing
9 or phone call or direct meeting. I don't recall.

10 Q Did you speak with Doctor Nearman about the letter?

11 A I don't remember that. It's possible, but I don't
12 remember speaking to him specifically about this
13 letter. I'd have to say no to that.

14 Q Did you speak with Doctor Norcia about the letter?

15 MR BIXENSTINE: I need to take a
16 break. I'm sorry.
17 - - - -

18 (Thereupon, a recess was had.)
19 - - - -

20 MR. GORDILLO: Back on the record.

21 Would you read back the last
22 question?
23 - - - -

24 (Thereupon, record read by Notary.)
25 - - - -

1 A I don't recall if I spoke to him specifically about
2 the letter.

3 Q And do you remember whether you spoke to Doctor
4 Wallace about the letter?

5 A I was not dealing directly with Doctor Wallace any
6 further.

7 Q Did there come a time when you were dealing with
8 Doctor Wallace?

9 A At the beginning until I learned that he was very
10 upset with this whole issue.

11 Q When did you learn that?

12 A I can't recall. About maybe midway through this
13 process. Whether it was in the spring of '09, I
14 don't recall. I'd rather not guess.

15 Q But before March 10th of '09?

16 A I don't know that.

17 Q That's what I'm asking. I understood your testimony
18 to say you knew that you hadn't spoke with Doctor
19 Wallace about this March 10th letter because at this
20 point you weren't --

21 A That may be true, because it became very clear to me
22 early that we should get him out of this.

23 Q But the decision to get him out wasn't made until
24 sometime in June, right?

25 A I don't recall exactly when it was made. It was

1 becoming very apparent that we had to change the
2 environment.

3 Q Look, please, at Exhibit 12 again.

4 A Okay. As I said, he was no longer a player. I'm not
5 sure the implication of when that happened is in the
6 letter. I can't answer that.

7 Q So it may have happened quite some time before this
8 email exchange on Exhibit 12; is that what you're
9 saying?

10 A It's possible.

11 - - - -

12 (Thereupon, Exhibits 17 and 18 were marked for the
13 purpose of identification.)

14 - - - -

15 Q (By Mr. Gordillo) Now you've been handed two
16 documents, one Exhibit 17 and the other Exhibit 18,
17 and I've given you those because you kind of need to
18 see them together to piece together the email string,
19 I think.

20 A Okay.

21 Q So I'll ask you together for Exhibit 17 and 18, do
22 you recognize both of these documents?

23 A Yes.

24 Q Okay. These are the continued emails regarding the
25 letter that Sarah Aronson sent to you, which is

1 . . . Exhibit 16, right?

2 A Yes.

3 Q And on the 13th of March, 2009 in Exhibit 17, you
4 responded back to her that you had spoken to Doctor
5 Nearman. I suggest you meet with him, not Norcia at
6 this point, right?

7 A Yes. I said that.

8 Q As you see that email, does it refresh your
9 recollection about a conversation you may have had
10 with Doctor Nearman about her letter?

11 A No. I don't recall discussing the letter with Doctor
12 Nearman. According to Exhibit 18, I -- I'm not sure
13 which one. I suggested that she send the letter to
14 Doctor Nearman before she talked to him.

15 Q Well, on Exhibit 17 --

16 A Yes. It says, Doctor Nearman understands the issues
17 and send him this letter and request a meeting.

18 Q The first part of the email message is, I have spoken
19 to Doctor Nearman?

20 A That's correct. But it doesn't mean -- I don't think
21 I sent him this letter.

22 Q Okay. What did you mean?

23 A When Doctor Aronson sends me a letter, I do not share
24 it with anybody she doesn't want me to share it with.
25 I can't maintain my relationship if I were to do

1 that.

2 Q Okay. What did you speak to Doctor Nearman about as
3 referred in Exhibit 17?

4 A I can't answer what we spoke about. I don't know --
5 I don't recall what I spoke to him about. There was
6 a lot of things that happened a couple years ago that
7 I can't remember.

8 We had a lot of discussions with Doctor Aronson
9 trying every way I could to maintain, to try to
10 establish some sort of comforting conversation.

11 Q Why did you think she should speak with Doctor
12 Nearman and not Doctor Norcia at this point?

13 A Because I think Doctor Norcia was too close to it at
14 this time, and Doctor Nearman had, at least in
15 talking to me, had a certain sympathy for the issues.

16 Q What made you think that Doctor Norcia was too close
17 to it at that time?

18 A Well, first of all, he's the program director and
19 he's the responsible person now. I assume by this
20 time -- I don't know this -- I tried to get Doctor
21 Wallace to be less involved, and I wanted to get
22 above the two main players to somebody I've known for
23 a long time who generally is interested in fairness.

24 Q Did you have reason to doubt whether Doctor Norcia
25 would be fair?

1 A No. I'm not sure that Doctor Aronson thought it
2 would be fair, and that's why I thought we would go
3 this route. My perception was she might be more
4 comfortable with this route.

5 - - - -

6 (Thereupon, Exhibit 19 was marked for the purpose of
7 identification.)

8 - - - -

9 Q (By Mr. Gordillo) All right. Now that you've been
10 handed Exhibit 19, again, take all the time you'd
11 like to look it over and let me know when you've had
12 an adequate opportunity to review it.

13 A Okay.

14 Q Do you recognize the document?

15 A Yes.

16 Q And these are emails between you and Sarah Aronson
17 again, right?

18 A Yes.

19 Q And do you understand that this was the follow-up
20 meeting that she had with Doctor Nearman as discussed
21 in the prior emails that we were looking at, Exhibits
22 17 and 18?

23 A Yes. Yes, that's correct.

24 Q All right. And she has informed you that she is
25 considering submitting a formal complaint to the

1 . ACGME, right?

2 A Yes.

3 Q And you asked her to meet with you before she
4 contacted the ACGME, right?

5 A Yes.

6 Q And you said you have some concerns for the message.

7 A I had some concerns for the timing, and then the
8 message, but she doesn't have to tell me what the
9 message is, and it is her right to go ahead and send
10 the letter.

11 Q You wrote, I have some concerns for the message.

12 A Mm-hmm.

13 Q What did you mean by concerns for the message?

14 A I don't know what she wrote down. Is the message
15 about poor treatment or is the message about the
16 institution? What's the message? I don't have to
17 know that. That's her right.

18 Q You were also concerned that the institutional review
19 was coming.

20 A Absolutely.

21 Q And why was a concern about the institutional review
22 connected to Sarah's telling you that she was
23 considering filing a complaint with the ACGME?

24 A The ACGME is coming to visit the institution, which
25 is a big deal. We prepare a 644-page document. They

1 look at all programs and processes and look at the
2 environment and look at a lot of things, and I was
3 not sure that the institutional reviewer would be
4 influenced negatively about the entire institution by
5 this letter, and that's what I was concerned about,
6 the timing. I'll stop there.

7 Q Was it only the timing that concerned you?

8 A Well, the timing of a negative letter about a bad
9 place, and that's not what you want to communicate to
10 a group that's coming out to evaluate you. So that
11 was what my concern was, but she can send it, and I
12 believe that they didn't use -- in fact, the reviewer
13 assured me that that wouldn't be part of the review
14 of our institution, so we had a good review and it
15 went well.

16 Q When the reviewer gave you this assurance that that
17 wouldn't be part of the review of the institution,
18 what was that about? What were you referring to?

19 A Well, he mentioned to me that he had met with Sarah.
20 The reviewer had met with Sarah. And I asked him
21 point blank -- not what he talked to her about,
22 because that's not my business -- in any way is the
23 review related to this complaint, and he said, no.
24 We keep those very separate. There's a separate
25 office in the ACGME with resident complaints that are

1 gone directly to them.

2 Q Well, you understood that generally her concern was
3 that she believed she was not being provided the
4 appropriate due process under ACGME requirements.

5 A Yes. That's what she said.

6 Q And you understood that if in fact the UH Program was
7 not providing due process pursuant to ACGME
8 requirements, that was sanctionable by the ACGME,
9 right?

10 A Well, this was -- they had not investigated this
11 complaint as yet. This was a process of their
12 learning about it. I guess I need to hear what the
13 specific question was.

14 Q If she were right in her complaint about being denied
15 due process, that violation was one for which the
16 ACGME can sanction UH as an institution, right?

17 A That would be a piece of information that would
18 describe what goes on here.

19 Of course, the ACGME when they visit, they talk
20 to 12 residents. They talk to all program directors.
21 They talk to me and others to see what is the
22 environment like here.

23 Q Okay. But you knew her concerns were broader than
24 her own, that she was concerned about due process,
25 right?

1 A I don't think that that's correct. The due process,
2 she was concerned about her own due process.

3 Q In the context of saying that the policies that UH
4 had did not comply with ACGME requirements, right?

5 A Where does it -- I don't recall that being said.

6 Q You never had that conversation with Sarah Aronson?

7 A About the process of what?

8 Q That the lack of an appeal process was inconsistent
9 with ACGME requirements?

10 A That's absolutely incorrect.

11 Q But you understood that that's what Sarah Aronson
12 believed, right?

13 A I have no idea about that.

14 Q She never informed you of it?

15 A She felt that that was correct. I don't know her
16 belief in what she said, a number of things.

17 Q But she told you that's what she thought, right?

18 A She thought, that's correct.

19 Q And you knew that that's what she wanted to complain
20 to the ACGME about, right?

21 A Right.

22 Q And you understood that if the ACGME had agreed with
23 her and found that the UH policy denied due process,
24 that was a serious sanctionable violation?

25 A This no appeal process in remediation is an ACGME

1 rule.

2 Q I understand.

3 A So it's not inconsistent with what we did, with what
4 the ACGME did.

5 Q Well, that answers the issue, but she was raising the
6 issue, right?

7 A Yes, she was.

8 Q And at the point that she's bringing it up to be
9 resolved by the ACGME, had the ACGME resolved that
10 unfavorably --

11 A No.

12 Q If they had, you understood that along with that
13 decision could come some serious sanctions?

14 A I think that's pure speculation.

15 Q Really?

16 A Yeah.

17 Q You mean the ACGME requirements don't say that they
18 can seriously sanction an --

19 A You said --

20 MR BIXENSTINE: Objection. Let him
21 finish.

22 Q Let me finish my question.

23 Is it your testimony that ACGME requirements do
24 not specify that if a sponsoring institution does not
25 comply with due process requirements that the

1 sponsoring institution could be sanctioned by ACGME?

2 A That is a possibility.

3 Q Do you recall -- let me rephrase this question.

4 Did you tell Doctor Aronson that the manner in
5 which this issue about her performance was being
6 handled was unconscionable?

7 A Did I think how she was being treated was
8 unconscionable?

9 Q Did you say that to her?

10 A I don't recall saying that. It may be her
11 perception, but I don't recall saying that. That's
12 not the kind of thing I generally say.

13 Q But you might have said it?

14 A I don't recall ever saying that.

15 Q If she testifies otherwise and says you told her you
16 thought this was unconscionable, would you contradict
17 that testimony?

18 A I would have to see the context of our conversation,
19 because I was doing a lot of investigation on my own.

20 Q So there could have been some context in which you
21 told her the way she was treated was unconscionable?

22 A I don't recall ever using that word, but I would say
23 that I got to look into this to make sure that you're
24 being treated fairly. That's my job.

25 Q And if she testifies that you told her that the

1 manner in which she was being treated was
2 unconscionable, she would be lying under oath?

3 A I was not here. I don't know. I don't recall saying
4 that.

5 MR BIXENSTINE: Objection.

6 A I do know that I was concerned about how she was
7 being treated. She knew I was concerned and met with
8 me often and felt that she could trust me.

9 Q I guess I want to be clear. Sometimes people say
10 they don't recall and it means they have no memory
11 one way or the other, and sometimes it means I didn't
12 say it, so I want to be clear about what you're
13 telling me here.

14 A I don't recall ever saying that, and it's not
15 consistent with the words I use when I talk to
16 residents or program directors.

17 Q Are you categorically denying using that word in the
18 context I described with Sarah Aronson?

19 A As I've said, I don't recall that I used that word.
20 That's not exactly categorical, but I don't recall
21 it.

22 Q In the Anesthesiology Residency Program, how are
23 training levels determined?

24 A As in every program, they're determined by the
25 competence of the individual and if they meet all the

1 competencies they're expected, how they perform, how
2 they take care of patients, their medical knowledge,
3 their professionalism, their understanding of a
4 system-based practice, all these things,
5 communication skills.

6 Q Does the evaluation period mark when the next level
7 in training occurs?

8 A Usually. If a person is going to go to the next
9 level, it's because they've met all of the criteria
10 or the measurements that a program director and his
11 faculty see in performance, yes.

12 Q And I know you testified that you weren't sure, but
13 I'll represent to you, and I don't think there's any
14 dispute, that anesthesiology residents were evaluated
15 every six months, right?

16 A I think that's correct.

17 Q That being the case, is each level of training
18 occurring at each six-month interval?

19 A It's unique to each program. It could be. It could
20 be that it's six months level. There may be also a
21 person could be on a rotation somewhere for a month,
22 and they get an evaluation on that rotation in less
23 than six months. But at least all of the evaluations
24 have to be looked at every six months.

25 Q Anesthesiology residents are typically recognized as

1 years one, two, and three, right?

2 A Yes. But there's a preliminary year.

3 Q The clinical base year?

4 A Yes.

5 Q And that's CA1, CA2, CA3, right?

6 A Yes. That's correct.

7 Q Do you know whether there are training levels within,
8 say, CA1, within CA2, within CA3?

9 A There'd have to be, because there has to be goals and
10 objectives for each year and each rotation. Those
11 are the rules that everybody has to follow.

12 Q So before a resident were at the end of a year, they
13 would have satisfactorily moved from one training
14 level to another?

15 A Yes. That's what we hope, yes.

16 Q And for example, when they got to CA1 and it was time
17 to become CA2, that was one of the series of training
18 levels that they had advanced?

19 A Yes.

— — — —

21 (Thereupon, Exhibit 20 was marked for the purpose of
22 identification.)

— — — —

24 Q (By Mr. Gordillo) You've been handed a document
25 marked as Exhibit 20. Please take all the time you'd

1 like to look it over.

2 A I know the document.

3 Q Tell me what it is, please.

4 A It's the institutional requirements that the ACGME
5 holds to the institution itself.

6 Q And you see that on -- these were the
7 institutional -- ACGME institutional requirements in
8 effect during 2008 and 2009, also, right?

9 A Yes.

10 Q And the section that's Roman Numeral II is the
11 Institutional Responsibilities for Residents, right?

12 A Mm-hmm, yes, sir.

13 Q Would you turn to Page 5 of the document?

14 A I have it.

15 Q And if you look at Paragraph II.D.4 --

16 A Yes.

17 Q Then I'm going to go to a letter, d(1).

18 A Okay.

19 Q And about half way through that first paragraph, it
20 indicates if the primary reasons for the non-renewal
21 or non-promotion occurs within the four months prior
22 to the end of the agreement, the Sponsoring
23 Institution must ensure that its programs provide the
24 resident with as much written notice of the intent
25 not to renew or not to promote as circumstances will

1 . . . reasonably allow, prior to the end of the agreement.

2 Did I read that correctly?

3 A Yes.

4 Q Did you understand this requirement to apply to the
5 circumstance by which Sarah Aronson was prevented
6 from promoting from her training period that ended in
7 December of 2008 that would have begun in 2009?

8 A The non-renewal of appointment has not been a subject
9 that we ever discussed.

10 Q But it's not limited to non-renewal of appointment.
11 It says non-renewal or non-promotion, correct?

12 A That's the definition of non-renewal. You don't move
13 forward; you don't move up. And this is to provide
14 when that's the issue, the rule that you have to make
15 this decision at least four months before the
16 person's terminated.

17 Q And that didn't happen in Sarah's case, right?

18 A This didn't pertain in Sarah's case.

19 Q Explain to me why not.

20 A She didn't have -- what pertained in Sarah's
21 situation was that she was extended for remediation,
22 and this is not about remediation. This is not the
23 next year. She didn't have a next year. She was
24 asked to perform a few months more to demonstrate
25 competence and that she's going to do okay. This did

1 not pertain.

2 Q Well, I think your testimony was that the level of
3 training occurred at the point at which the
4 evaluation was made, right?

5 A That's true.

6 Q And Sarah received an unsatisfactory evaluation for
7 the training period that ended December 31, 2008?

8 A That's correct.

9 Q So had she not received that unsatisfactory
10 evaluation, she would have been promoted January 1st
11 of 2009, correct?

12 A That was not a promotion, that was a continuation.
13 She was in her final year. She wasn't going to be
14 promoted to another year.

15 Q Well, your testimony before was that you could be
16 promoted on a training level before being promoted to
17 another year.

18 A The context of our conversation before was more
19 general.

20 Q Oh, it changes now because it's about Sarah?

21 MR BIXENSTINE: Objection. Do your
22 best with it.

23 A I'll try. That's interesting. No. If the program
24 says every six months we'll evaluate to see if they
25 go to the next year, this was at mid year. They felt

1 that performance was to the point that it was
2 unsatisfactory and a decision was made and agreed to
3 continue for six months to take certain rotations,
4 whatever. I don't know what their major criteria
5 were.

6 Q Why didn't she graduate six months after January?

7 A She was not -- six months after January?

8 Q Right.

9 A She was not exactly in a January/July type thing.
10 July 1 to July 1, most of them are in, and I think
11 she was off cycle, as I recall.

12 Q But as I understand the testimony here is that she
13 was remediated to extend training six months, right?

14 A Mm-hmm.

15 Q And she received that notice in January of 2009 to
16 remediate by extending her training by six months,
17 correct?

18 A Right.

19 Q So my question is why after six months of that
20 remediation beginning in January didn't she graduate?

21 A The extension began on March 1st, because that's when
22 she should have completed the program, not July 1st.

23 Q So what was she to do between January and March 1st?

24 A Complete her -- that's part of her contract. Her
25 contract was from March 1st to February 28th.

1 Q Are you suggesting that the remediation didn't begin
2 until March 1st?

3 A The extension begins when the program should have
4 been over.

5 Q Why wasn't she permitted to remediate before then?

6 A I can't answer that question.

7 Q Is there any good reason for not allowing her to
8 remediate before that?

9 A The subjects that came up were dealt with, and the
10 deficiencies were dealt with at a specific time when
11 a decision had to be made, and that's how it
12 happened.

13 Q Is there any process consistent with the ACGME
14 requirements that would suggest that when a resident
15 needed to remediate their performance that the
16 remediation should wait a period of two months before
17 it begins?

18 MR BIXENSTINE: Objection.

19 A If you extend a program, it's extended from that
20 point that the program should have ended. I don't
21 think that the ACGME would disagree with that.

22 Q Do you know whether Doctor Aronson was given an
23 opportunity to remediate her performance in the
24 window between January 1st of 2009 and the end of her
25 contract in place at that time?

1 A I don't know that.

2 Q Do you know whether she was given that option?

3 A I don't know.

4 Q Beginning in the fall of 2008, Sarah Aronson began
5 applying for jobs anticipating her completion of the
6 Residency Program.

7 Did you assist in any way in her efforts to
8 obtain other employment?

9 A No.

10 Q Were you contacted by any prospective employer in
11 connection --

12 A No.

13 Q Were you consulted by anyone within the
14 Anesthesiology Residency Program about how to respond
15 to prospective employers regarding Sarah Aronson?

16 A No. At that point, I wasn't aware of what position
17 she had. I found out later she had a position.

18 - - - -

19 (Thereupon, Exhibit 21 was marked for the purpose of
20 identification.)

21 - - - -

22 Q (By Mr. Gordillo) Now you've been handed Exhibit 21,
23 and please take all the time you'd like to look it
24 over and let me know when you've had an adequate
25 opportunity to review it.

1 A I've read it.

2 Q Do you recognize the document?

3 A Vaguely. This is -- yes.

4 Q Tell me what it is, please.

5 A It's a letter to me asking for advice on how to deal
6 with Doctors Norcia and Wallace. They were
7 tentatively scheduled for the next day. This was in
8 June.

9 Q Mm-hmm.

10 A It will be the first time that the program directors
11 have met with me since February. I've made several
12 attempts to schedule a review meeting, which were
13 supposed to occur monthly during this time. Last
14 week I received a letter from the ACGME that
15 notification of my formal complaint had been sent to
16 you and Norcia. I'm concerned that any meeting I
17 have with the program director at this point stay on
18 the intended topic. I will not feel comfortable
19 meeting with Norcia and Wallace if they choose to
20 engage in a discussion about concerns I submitted to
21 the ACGME. That dialogue is between them and the
22 RRC. Do you have any advise to how I should handle
23 this upcoming meeting? Should I have someone else
24 join me? That was it.

25 Q Did you respond to this email?

1 A I don't recall what I said. I don't know if I put it
2 in writing or called her. I'm sure I responded, but
3 I don't know exactly what I said.

4 Q And with respect to her mentioning that she had sent
5 the letter to ACGME, notifying about her formal
6 complaint, did you know she had sent the letter?

7 A I knew about it when I met with her. She said she
8 was going to send it and I said fine.

9 Then we got a letter that notified of a formal
10 complaint, that she received that letter, that they
11 were notified of the complaint.

12 Q Sent to you and Doctor Norcia?

13 A Yes. Every time there's something like this, I'm
14 involved.

15 - - - -

16 (Thereupon, Exhibit 22 was marked for the purpose of
17 identification.)

18 - - - -

19 Q (By Mr. Gordillo) Now you've been handed a document
20 marked as Exhibit 22. Again, take all the time you'd
21 like to look it over and let me know when you've had
22 an adequate opportunity to review it.

23 A Okay.

24 Q Do you recognize the document?

25 A Not in this form.

1 Q You've seen it in a different form?

2 A I recall -- I'm trying to think if I even saw this.

3 I don't recall this document. Obviously, it's sent
4 to me. Okay. All right. I guess I've seen it.

5 Q As you sit here today, do you have a specific
6 recollection of having received it before?

7 A I have -- my stronger recollection is the information
8 I got from the ACGME to respond to these things
9 that -- I think where this came from is -- the bold
10 type is what was in the letter, what we were asked to
11 respond to, which we did.

12 Q Okay. Let's look at something else then.

13 - - - -

14 (Thereupon, Exhibit 23 was marked for the purpose of
15 identification.)

16 - - - -

17 Q (By Mr. Gordillo) You've now been handed a document
18 marked as Exhibit 23.

19 A Mm-hmm.

20 Q Again, take all the time you'd like to look it over
21 and let me know when you've had adequate time to
22 review it.

23 A Okay.

24 Q Do you recognize this document?

25 A Yes.

1 Q Can you tell me what it is, please?
2 A It's a letter from Sarah to me asking me to
3 intervene. She'd like to graduate on time. And she
4 told me this in July. And she described a series of
5 concerns with HR and FMLA time -- which I did not get
6 involved with -- that's up to HR and the details of
7 the interaction with the department. And the
8 scheduling, I see that there was concern that she was
9 being scheduled, and much of the letter has to do
10 with, is this retaliation?

11 Q What actions, if any, did you take after receiving
12 this letter?

13 A None. Because these are things that are not in my
14 purview, and there's various dates and times and
15 numbers of days I didn't have access to, and this is
16 something that was being worked on with HR, as far as
17 I knew.

18 As far as the scheduling is concerned, I have to
19 leave the schedule up to the program director, unless
20 I think it is retaliatory, and there were -- some of
21 these rotations were rotations where Doctor Aronson
22 had some difficulty, so they were going to ask her to
23 repeat some of those. That's what I get from this
24 letter.

25 Q Did you suggest to Doctor Aronson that she needed to

1 . report her concerns about retaliation to someone
2 other than you?

3 A I don't think I told her that. She's already done it
4 to the ACGME, a more important person than I am.

5 Q What did you understand the ACGME could do with
6 respect to concerns that an individual resident had
7 about the way an institution was treating its
8 individual resident?

9 A We wrote a letter answering the concerns. We got no
10 response. I phoned Marcia Miller of the ACGME who
11 runs this committee for residents, and all she said
12 is, we don't send you our response. I said: This is
13 outrageous -- I used that word with them -- in that
14 you've asked us to respond to a tremendous allegation
15 that we deny and put in writing, and you investigated
16 it not only with your committee, but with a site
17 visitor who came to town to talk to everybody, and
18 you haven't told me anything, and she said, that's
19 not our policy. So had they seen something there --
20 now this is speculation --

21 MR BIXENSTINE: I don't want you to
22 speculate.

23 A I won't speculate. I will testify what I know.

24 I didn't hear that they had responded in any way
25 negatively toward us, nor did the site visitor

1 respond negatively toward us.

2 Q Did anyone from the ACGME communicate to you that the
3 ACGME would not intervene in a dispute between an
4 individual resident and its program director?

5 A No.

6 Q Would it surprise you to know that that's the
7 position taken by the ACGME?

8 A It would surprise me, particularly since they're
9 asking for both sides, and one would think that they
10 would try to sort it out and give advice or sanction,
11 or whatever. That to me -- and I advised the ACGME
12 of my feelings about this.

13 Q In a context dealing with Sarah's concerns?

14 A In any context.

15 Q But specifically --

16 A Yes. This is what triggered it.

17 I said, I'm surprised that we haven't heard
18 anything. That's not our policy. Then what's this
19 about? I was very surprised.

20 Q The ACGME issued citations to the Residency Program,
21 right?

22 A Based upon this?

23 Q No. Based on the institutional review.

24 A At that review there were two citations.

25 Q What were the citations?

1 A It had to do with internal reviews and documentation,
2 of our Graduate Medical Education Committee, of every
3 citation of every program, they want us to discuss it
4 in an open meeting, which would mean about 200
5 citations with 65 programs, and we had a method by
6 which we did that. This is a brand new rule, and
7 across the county, it's a problem, and this rule --
8 they said -- the site visitor said that looks great,
9 and ACGME Residency Review Committee cited us for it,
10 said we have to do it differently, so we will next
11 time.

12 Q And you said there were two things?

13 A Both relate to the same thing, to internal reviews
14 and discussion of action plans, that is who discussed
15 the action plans. So those were interesting, and I
16 was surprised with that.

17 Q I want to go back to Exhibit 23 again.

18 Did you understand that Doctor Aronson believed
19 she was being retaliated against because of her FMLA
20 request?

21 A From this document, I believe that's what I would
22 conclude.

23 Q And your belief was that the appropriate action for
24 her to take was to go to the ACGME?

25 A I never recommended that she go to the ACGME.

1 Q What did you believe was the appropriate action for
2 her to take based on her belief that she was
3 suffering retaliation based on her FMLA request?

4 A I would expect to hear from the Human Resources that
5 they -- that the FMLA time was being done
6 inappropriately, if it was. I would have expected to
7 hear from our institution itself, including counsel.

8 Q All right. When she forwarded her concerns to you,
9 you did not forward the concerns to HR; is that
10 correct?

11 A I don't know what I did with this document. I don't
12 send her documents to anyone unless she asked me to.

13 Q I think your testimony before was you took no action
14 in response to this document.

15 A I saw this was not an area where I could take action.
16 I don't have the expertise to discuss FMLA, that type
17 of thing.

18 Q So you didn't give her any advice about what to do
19 about her concerns about retaliation?

20 A I don't recall how I responded to her in any other
21 way. I may have. I may not.

22 Q And you understood that she was specifically
23 concerned that her scheduling was the form in which
24 the retaliation was taking place, right?

25 A According to the letter, that's what she was saying.

1 - - - -
2 (Thereupon, Exhibit 24 was marked f
3 identification.)

4 - - - -

5 Q (By Mr. Gordillo) You've been handed a document
6 marked as Exhibit 24. Would you please take all the
7 time you'd like to look it over and let me know when
8 you've had adequate opportunity to review it.

9 A This looks like it's a letter from Matt Norcia to
10 Sarah Aronson copying a number of people, including
11 Wallace, Nearman, and counsel, and he was trying
12 to -- he was summarizing the discussion they had on
13 7/14 about make-up time and the fact that Doctor
14 Norcia removed the SICU rotation originally scheduled
15 for the last two weeks and rescheduled the Metro
16 rotation so that she could get her trauma numbers,
17 which means you have to have a certain number of
18 types of cases.

19 This schedule will make it easier to grant a
20 reading day prior to the exam and allow you to have
21 your FMLA day on 8/10. Please reply as to whether
22 these are the terms we discussed, and that's what the
23 letter says.

24 Q All right. The bottom of Exhibit 24 shows that Sarah
25 Aronson sent you an email on the evening of July 12th

1 . about a scheduling issue, right?

2 A I don't have anything other than the letter.

3 Q Right.

4 A Says schedule issue.

5 Q Right. Subject: Schedule issue. Right? Very
6 bottom.

7 A Right, mm-hmm.

8 MR BIXENSTINE: This thing is
9 incomplete.

10 MR. GORDILLO: It is. That's all I
11 have. In fact, I think, if I recall,
12 this was taken from the exhibit you
13 produced at her deposition.

14 A Yes. I guess I referred -- I was referring to a
15 letter.

16 Q Okay. So the next day you sent an email to Doctor
17 Norcia referring to the letter?

18 A All I said to Doctor Norcia, and that's the total
19 since my -- all that identity stuff is below it, that
20 was the total thing I responded.

21 Q Do you know whether the letter referenced the
22 July 13th letter you received?

23 A I can't answer that. I don't know.

24 Q Okay. But you would agree with me then that the top
25 email, when it references a summary of what we

1 discussed yesterday afternoon concerning the issues
2 you presented to Doctor Shuck, certainly aligns with
3 the issues that Sarah raised in her letter to you on
4 July 13th, correct?

5 A Yes. It looks like the Legal Department and the
6 department itself had agreed upon some action.

7 Q Were you involved in any of the decisions regarding
8 the schedule changes reflected in the top email?

9 A No, sir. I don't interfere with that. I don't have
10 the expertise for that.

11 Q And do you recall any discussions with Doctor Norcia
12 about the meeting that is referenced in the top email
13 in Exhibit 24?

14 A No, I don't.

15 - - - -

16 (Thereupon, Exhibit 25 was marked for the purpose of
17 identification.)

18 - - - -

19 Q (By Mr. Gordillo) I have now handed you a document
20 marked as Exhibit 25. Again, take all the time you'd
21 like to look it over and let me know when you've had
22 an adequate opportunity to review it.

23 A Okay.

24 Q Do you recognize the document?

25 A I don't recall the document. I just looked at it.

1 Q It's a string of emails.

2 A I'm copied on everything. I understand.

3 Q As you reviewed the document, do you recall the
4 substance of the thread?

5 A Yes. There's a number of issues here, and obviously
6 one is Doctor Aronson finished or not finished?

7 Can she leave now or does she need more time?

8 I got involved in this when I said that I want
9 that certificate expedited so I could sign off on it
10 that she's completed to help her with her job search.
11 And she had asked Norcia and Howard Nearman to have a
12 copy of a letter submitted to the ABA by the end of
13 this week. She was told that she can take the exam
14 in August, that she was eligible to take the exam in
15 August, and the scheduling of her last days and when
16 it would end. I don't know -- I was not privy to
17 those discussions after it said I discussed it with
18 Rowbottom, and I'll get back to you when appropriate.

19 Q She had actually asked you to intervene on the
20 certificate issue about a week earlier, right?

21 A Someone. She probably went to Barbara Zuik who came
22 to me and said, can we do this? And I said,
23 absolutely. I don't know if she told me or Barbara
24 did.

25 Q I wasn't going to mark this as an exhibit, but I have

1 . . . a letter --

2 A So I said I would push this. My intent was to push
3 it.

4 Q Right.

5 A Who told me to do it, I don't care.

6 Q I'm just trying to get timing issues down, that she
7 was asking you about this actually before this string
8 of emails came on Exhibit 25.

9 A Okay.

10 Q My question to you is with respect to Exhibit 25. As
11 I see it, and I want you to confirm for me that I'm
12 saying things accurately, that on the 25th of August,
13 she's raising a concern about whether she's completed
14 her work. On the 27th of August, she's further
15 asserting that she has completed her work. And in
16 response on the 27th, Matthew Norcia writes back to
17 her, says he will see if she can be permanently
18 relieved, right?

19 A That's the intent of this.

20 Q Do I understand your prior testimony that you had
21 nothing to do with what happened after that email?

22 A No.

23 Q Were you aware that she was allowed to leave that
24 same day?

25 A I was told she was allowed to leave. I wasn't privy

1 to the conversation. I was pleased that she was
2 allowed to leave.

3 MR. GORDILLO: Off the record.

4 - - - -

5 (Thereupon, a recess was had.)

6 - - - -

7 A The final days I was not aware of when she was
8 leaving. I don't know if she came up or not. I
9 can't recall that. She may have.

10 - - - -

11 (Thereupon, Exhibit 26 was marked for the purpose of
12 identification.)

13 - - - -

14 Q I'm going to shift gears on you again here and ask
15 you to look at Exhibit 26 that you've just been
16 handed. Take all the time you'd like to review it
17 and let me know when you've had adequate opportunity
18 to review it.

19 A Okay. Yes.

20 Q Do you recognize the document?

21 A No.

22 Q You see what it purports to be, right? The Glossary
23 of Terms Related to Resident Duty Hours to be
24 inserted into the Glossary of Selected Terms Used in
25 GME Accreditation, right?

1 A Yes. That's what it says on top.

2 Q There's the term Duty Hours that's defined. Do you
3 see that?

4 A Yes, sir.

5 Q As you read how it defines duty hours, is that
6 consistent with your understanding of the definition
7 of duty hours as used by UH and the ACGME?

8 A Yes.

9 Q As you sit here today, are you aware of any conduct
10 by Sarah Aronson that would have merited terminating
11 her employment while she was employed at UH?

12 A If you're asking if I observed anything, the answer
13 is no. I didn't. I may have been in the operating
14 room with her. I don't remember. And I know nothing
15 else except what I've read here and what we
16 discussed.

17 Q That's my question. Have you learned of anything
18 since she's left her employment that now would cause
19 you to think, we should have fired her for that?

20 A I haven't really thought about that. No. I haven't,
21 no.

22 MR. GORDILLO: Okay. Give me just a
23 few minutes to step out.

24 - - -

25 (Thereupon, a recess was had.)

1
2 -----
3 MR. GORDILLO: I'm all done. Thank
4 you for your patience today.
5

6
7 MR BIXENSTINE: Good enough. We'll
8 see you tomorrow morning.
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(Deposition concluded at 5:30 p.m.)

1 State of Ohio,)
2 County of Cuyahoga,)
3) SS: CERTIFICATE
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I, Mary C. Peck, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named JERRY SHUCK, M.D. was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth;

That the deposition as above set forth was reduced to writing by me by means of stenotypy, and was later transcribed upon a computer by me;

That the said deposition was taken in all respects pursuant to the stipulations of counsel herein contained; that the foregoing is the deposition given at said time and place by said JERRY SHUCK, M.D.

That I am not a relative or attorney of either party or otherwise interested in the event of this action.

That I am not nor is the court reporting firm with which I am affiliated under a contract as defined by Civil Rule 28(D).

IN WITNESS WHEREOF, I hereunto set my hand and seal of office, at Cleveland, Ohio this 10th day of January, A.D. 2011.

Mary C. Peck, Notary Public

My commission expires December 30, 2011